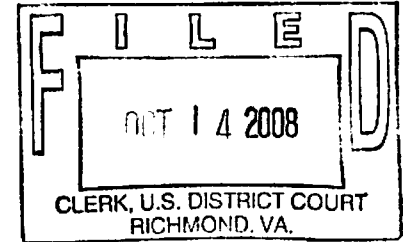


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



MEARS GROUP, INC.,

Plaintiff,

v.

Action No. 3:08-CV-329

L.A. PIPELINE CONSTRUCTION CO.,
INC.,

Defendant and Third-Party Plaintiff,

v.

COLUMBIA GAS TRANSMISSION CORP.,

Third-Party Defendant.

MEMORANDUM OPINION

THIS MATTER is before the Court on Mears Group, Inc.'s Motion to Dismiss Amended Counterclaim (Docket No. 39), filed August 11, 2008. For the reasons stated below, the Motion to Dismiss Amended Counterclaim shall be GRANTED.

BACKGROUND

On May 29, 2008, Mears Group, Inc. ("Mears"), a Delaware corporation with its principal place of business in Michigan filed a Complaint against L.A. Pipeline Construction Co., Inc. ("LAPC"), an Ohio corporation with its principal place of business in Ohio and a registered office in Glen Allen, Virginia. Mears's Complaint alleges breach of contract, breach of warranty, and promissory estoppel.

In addition to filing an Answer on July 1, 2008,¹ LAPC brought a Counterclaim against Mears alleging Mears's negligence. Mears filed a Motion to Dismiss Counterclaim on July 15, 2008, asserting that the Counterclaim failed to state a claim upon which relief could be granted. Instead of filing a Response to the Motion to Dismiss, LAPC filed an Amended Counterclaim on August 1, 2008.² The Amended Counterclaim alleged breach of contract by Mears. On August 11, 2008, Mears responded with a Motion to Dismiss Amended Counterclaim.

DISCUSSION

Following Mears's Motion to Dismiss Amended Counterclaim, LAPC failed to file a Response or move for an extension of time. Thereafter, Mears and LAPC agreed that LAPC's Amended Counterclaim should be dismissed. The Court agrees as well.

CONCLUSION

For the foregoing reasons, the Motion to Dismiss Amended Counterclaim shall be GRANTED. LAPC's Amended Counterclaim is DISMISSED WITH PREJUDICE.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Chief United States District Judge

ENTERED this 14th day of October 2008

¹ The Court granted LAPC's Motion for Extension of Time to Answer in an Order dated June 25, 2008.

² The Court denied the original Motion to Dismiss Counterclaim as moot in an Order dated August 6, 2008.